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September 20, 1947

SUMMARY MINUTES

Third Meeting in Negotiations Between the United States and Italian Delegations for a Treaty of Friendship, Commerce and Navigation

CDC/MR

REVIEWED BY L.M. Dunn DATE 1/25/83 Approved:

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PA Participations #7903989 10/23/79

For the United States: Messrs. Walmsley, Ainsworth, Setser.

For Italy: Messrs. Lombardo, Iannelli, Dall'Oglio, La Rosa, Sorrentino, Cattani, Ferrero, Simonis, Ippolito, De Rossi.

Time: 10:00 A. M. Saturday, September 20, 1947.

Place: Palazzo Chigi.

The President of the Italian delegation handed the American negotiators, as arranged at the previous meeting, a memorandum of the agreements between Italy and The Holy See.

The negotiators proceeded to the examination of the articles of the draft treaty.

Article III

The Italian negotiators stated that there appeared to be some conflict between the provisions of this article and existing Italian law as set forth in Article 2510 of the Civil Code and in certain special legislation regarding companies with prevailing foreign interests. Since the legal limitations upon foreign participation related primarily to companies engaged in certain types of banking and in public transportation, they stated that the acceptability of paragraph 2 of the article would depend upon the interpretation to be given to the term "commercial activities".

The American negotiators stated that the term commercial, as used in the treaty, is to be understood in the sense of buying and selling and the exchange of goods; and activities necessary for or incidental thereto. Specifically, they stated that paragraph 2 of Article III is not intended to accord any rights to engage in banking,

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public transportation or public communication activities. The Italian negotiators stated that, in view of this explanation, they were satisfied that the provisions of the article are not contrary to existing Italian law. They stated, however, that, since banking is not included among the activities enumerated in the Article, they would like to propose certain provisions, which would permit nationals and companies of each to participate in the banking enterprises of the other.

The American negotiators referred to the fact that Article II, paragraph 3, which contains a cross reference incorporating paragraph 2 of Article I, would accord rights relating to the establishment of branches of banking corporations of one country within the territories of the other. Article II, on the other hand, relates only to the participatic of nationals and companies of one country in the domestic corporations of the other. Since the legislation of certain American States relating to the organization of banking corporations contains restrictions on the participation of foreign corporations, however, it is considered inappropriate to include banking in the activities enumerated in Article II.

The Italian negotiators then stated that they could agree to accept the Article without change, provided they were given assurances that the subsidiaries (referred to as trust companies) of Italian banking companies which were established in the States of New York, Illinois, Pennsylvania, and Massachusetts before the recent war could be reestablished in those States. The American negotiators agreed to endeavor to secure information as to whether the laws of those states have been changed in such a way as to prevent the reestablishment of the Italian subsidiaries.

Article IV

The Italian negotiators stated that this Article is acceptable to their Government.

Article V

The Italian negotiators stated that paragraph 1 of this Article is acceptable to them.

With respect to paragraph 2, they stated that they would want to include in the treaty or minutes an interpretation of the word "prompt", in the phrase "prompt payment of just and effective compensation", which would make it clear that there is not intended any interference with the established procedure in the adjudication of cases involving the expropriation of property. They stated that in cases where the property owner refuses to accept the initial award of the Government the ensuing legal proceedings may involve considerable delay. Although

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no compensation is paid to the owner until the claim is finally adjudicated, the Italian negotiators stated, an amount equal to the original award offered by the Government is placed in a special bank account in the name of the property owner and interest is paid on this account during the period of adjudication. The American negotiators stated that their Government considered the proposed rule as declaratory of international law in the subject matter, but that they did not think that the word "prompt" could be interpreted as requiring interference with normal judicial procedures provided that there should be no unreasonable delay in the adjudication of the claim. The Italian negotiators suggested the substitution of the phrase "prompt procedure for payment" for the words "prompt payment", or the insertion of an interpretative statement in the minutes. The American negotiators agreed to consult their Government on the point.

The Italian delegation also objected to the use of the words "without interference" in the phrase relating to the withdrawal of compensation in paragraph 2 of this Article, asserting that the imposition of any exchange regulations would constitute interference. The American negotiators stated that they interpreted the words to mean Governmental interference inconsistent with the right accorded to withdraw the compensation. They pointed out that it would be possible for the authorities while ostensibly conceding the right to withdraw, to impose so many unreasonable requirements as to destroy or reduce the value of the right proposed to be accorded. The Italian negotiators stated that such a phrase as "without illegal interference", might be acceptable, but that they considered the phrase, as it now stands inconsistent with their laws and regulations on exchange control. The American negotiators stated they would give further consideration to the point and consult their Government.

The Italian delegation stated also that they considered the rule proposed in paragraph 2 of this Article for determining the rate of exchange which should apply in cases of the withdrawal of the proceeds of expropriated property wholly inconsistent with sound principles of exchange control, but that they would postpone detailed discussions of the point until the other provisions of the draft treaty relating to exchange control should be considered.

The Italian delegation stated that it had no objection to paragraph 3 of this Article.

With respect to paragraph 4 of this Article, the Italian delegation proposed the deletion of the word "interpreters" in the first sentence. They stated that under Italian law, the court is charged with the function of appointing an official interpreter. The American negotiators explained that the purpose in listing "interpreters" was to accord the litigant the right to employ and bring into court his own interpreter in order that he might satisfy himself that his case was being tried

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justly, and that there was no intent to propose that a party to the action should have the right to designate the official interpreter. They pointed out that when a party to the action speaks a language different from that of the tribunal, the possibility that there may be a denial of justice is greatly increased. The Italian negotiators stated that they would prefer to drop the word, or include an interpretative statement in the minutes or protocol. They stated that the use of the word "representative" would permit the parties to bring into court interpreters to assist their attorneys.

With regard to the provision in paragraph 4 relating to "freedom of access to the courts of justice and administrative tribunals", the American negotiators referred to the fact that aliens are permitted by law to sue in the United States Court of Claims only if they can establish the fact that American nationals may prosecute claims against the government, under comparable procedures, in the country of which the alien litigant is a national. They stated that they would like a statement for the record regarding procedures provided in Italy for aliens to prosecute claims against the government. The Italian negotiators stated that in Italy claims against the Government are adjudicated in the ordinary courts of justice, and that any foreigner may without restriction prosecute such a claim in any court including the Consiglio di Stato, and at any stage of proceedings. There is no discrimination in the treatment accorded to Italians and to aliens in this connection, the Italian negotiators stated.

Article VI

The Italian negotiators stated that they had no objection to the inclusion of this Article in the Treaty, but that they considered its provisions entirely superfluous, since the rights that would be accorded by its provisions are already granted in Italy and are fully provided for in the Italian Constitution.

Article VII

The Italian negotiators stated that, although paragraph 1 of this article is not stated in reciprocal terms, they were willing to accept it as to substance, recognizing the constitutional difficulty of the United States Government. The American negotiators replied that they were conscious of the apparent lack of reciprocity in the provisions, but that, since many American States accorded full national treatment to Italians and the restrictions in others were not onerous, they felt that the proposal is not unreasonable. They added that the Italians themselves could establish complete reciprocity under the provisions of the paragraph by refusing national treatment to the residents and companies of those American States which do not accord national treatment to Italians.

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The Italian negotiators stated that they felt that the paragraph could be redrafted in such a way as to create less of an appearance of lack of reciprocity. The American negotiators agreed to consult their Government with regard to the possible re-arrangement of the provisions in accordance with the Italian suggestion.

The Italian negotiators proposed specifically that the words "in conformity with the applicable laws and regulations" be added after the word "permitted" in the opening clause of the paragraph. They also proposed the addition of a provision which would accord most-favored-nation treatment to the nationals of either country within the territories of the other with regard to the acquisition, ownership, and disposition of immovable property. The American negotiators agreed to refer these points to their Government.

Referring to paragraph 3, of this Article, the Italian negotiators stated that the provision that the recipients of personal property by succession should be determined by the law of the place of last domicile of the de cuius is irreconcilable with the Italian law of succession, which provides that the national law of the de cuius shall be applied. The American negotiators stated that they had been authorized by their Government to drop this provision from the treaty.

The Italian negotiators stated that they would have no objection to paragraph 4 of this article if their suggestions regarding paragraph 1 were found acceptable.

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